No. 100

MAY 22

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY ET AL., APPELLEES,

VS.

ILLINOIS NATURAL GAS COMPANY, APPELLANT.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' STATEMENTS MAKING AGAINST JURISDICTION AND IN OPPOSITION TO APPELLEES' MOTIONS TO DISMISS APPEAL OR AFFIRM DECISION OF THE SUPREME COURT OF THE STATE OF ILLINOIS.

GLENN W. CLARK,
RUSSELL VOERTMAN,
Kansas City, Missouri,
ALBERT C. SCHLIPF,
Springfield, Illinois,
Counsel for Appellant.

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Both Central Illinois Public Service Company and Illinois Commerce Commission, appellees herein, have filed statements of matters which, according to their contentions, militate against the jurisdiction of this court, and in connection therewith each of said appellees has filed a motion to dismiss or, in the alternative, to affirm. Since the motions of both appellees have for a common ground the alleged lack of a substantial federal question, and since both statements present practically the same contentions, all will be treated as one in this brief, except in instances where the text of any of said motions or

statements seems to require specific reference for the sake of clarity and the convenience of this court.

Since the important facts have been related in appellant's jurisdictional statement, they will not be reiterated separately here, except where required by the argument.

At the outset, specific reference must be made to the motion of appellee, Central Illinois Public Service Company, because of the contention, not contained in the motion of Illinois Commerce Commission, to the effect that the federal question relates to a claim of immunity under a statute of the United States, which federal question may be reviewed only by certiorari. We believe this contention to be wholly without merit. In this cause there seasonably and squarely was raised before the state court the validity of an order of the Illinois Commerce Commission and the statute (as applied to appellant) under the supposed authority of which the order was made, on the specific ground that said order and the statute under which the order was made (in so far as the statute purported to authorize said order), and as applied to appellant herein, would interfere with and place a burden upon interstate commerce in contravention of the commerce clause of the Constitution of the United States. Unquestionably, the order of the Illinois Commerce Commission is a statute within the meaning of the Judicial Code, Section 237 (a), as amended. *Live Oak Water Users Assoc.* v. *R. R. Comm.*, 269 U. S. 354, 70 L. Ed. 305. The decision of the Supreme Court of Illinois was in favor of the validity of said order as applied to appellant. This case, then, falls squarely within the provisions of Section 237 (a) and is properly before this court on appeal. *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 66 L. Ed. 239.

In addition to the question of the validity of the order of Illinois Commerce Commission because of the repugnancy of the order to the commerce clause of the

Constitution of the United States, there also was duly drawn in question the validity of said order on the ground of conflict with a federal law, the Natural Gas Act (52 Stat. at L. 821-33, U. S. C. A., Tit. 15, Sec. 717-717W) in that the Federal Power Commission had exclusive jurisdiction over appellant and the subject matter of the case under the provisions of the Natural Gas Act and that the Illinois Commerce Commission was therefore without jurisdiction.

In the case of *Alabama and Vicksburg Railway Co.* v. *Jackson & Southern Ry. Co.*, 271 U. S. 244, 70 L. Ed. 928, which bears a close analogy to this case, this court held that the case was properly before it on writ of error and dismissed the petition for certiorari. If, therefore, in the opinion of this court, the question as to the conflict between the order of Illinois Commerce Commission and the Natural Gas Act constitutes a claim of immunity under a federal law which, standing alone, could not be made the basis of an appeal, but only the basis for a petition for certiorari, then this court will consider that question as a matter of course with other questions properly before it on appeal (*Prudential Ins. Company of America* v. *Cheek*, 259 U. S. 530, 66 L. Ed. 1044) or, in any event, arrive at the same result by the application of Section 237 (c) of the Judicial Code. *Lavine* v. *State of California*, 286 U. S. 528, 76 L. Ed. 1270.

We come now to the principal contention of appellees to the effect that principles established by numerous decisions of this court preclude the existence of a substantial federal question in this cause.

While we shall have more to say later with respect to the Natural Gas Act, it is apparent that the principal and primary question here is not one involving a conflict between the Illinois Commerce Commission order and the Natural Gas Act or of an immunity under the federal law claimed by appellant. That question was brought

into focus because Illinois Commerce Commission was attempting to force appellant to construct a pipe line twenty miles in length into a market in which it appeared that natural gas was already being served by another natural gas company, as defined in the Natural Gas Act, and to sell natural gas in said market for resale to the inhabitants of several towns and communities in the very teeth of Section 7 (c) of the Act which specifically forbids such an act by a natural gas company unless it shall first obtain from the Federal Power Commission a certificate of convenience and necessity and Section 7 (a) which confers jurisdiction upon the Federal Power Commission to determine the desirability of an extension of facilities under such circumstances and to order such extension when deemed to be in the public interest. A natural gas company is defined in Section 2, Paragraph 6, of that Act as one "engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." Therefore, it is obvious that the act applies to appellant if appellant's activities fall within that definition. Consequently, the crux of this entire cause is the question of whether or not appellant is engaged in the transportation or sale for resale of natural gas in interstate commerce. If so, the order of the commission may be, and is, if appellant's contentions are sound, repugnant to the commerce clause by reason of the attempt directly to interfere with and burden such commerce. If appellant is in fact engaged in interstate commerce, then there would seem to be little, if any, room in the authorities for the arrogation by the Illinois Commerce Commission of the sort of regulatory power herein sought to be exercised, nor the usurpation of jurisdiction over appellant, heedless of the Natural Gas Act, regardless of any attempted prior assumption of jurisdiction by that body or of any acquiescence therein by appellant.

Clearly, the nature, extent and potentialities of the type of regulation sought to be imposed upon appellant by means of the order of Illinois Commerce Commission are of such profound scope that it cannot seriously be argued that no substantial federal question is presented here once it is conceded that appellant's activities may be of an interstate character. The decisions of this court are replete with situations wherein interference with, obstruction of, and burden upon, interstate commerce, no more onerous than that attempted in this case, was forbidden. As examples of forms of regulation or interference, which were struck down by this court, are the attempt of a state commission to compel telegraphic stock exchange quotations to be supplied to an individual in the case of *Western Union Tel. Co.* v. *Foster*, 247 U. S. 105, 62 L. Ed. 1006, the attempt of a state tax commission to exact from an interstate pipe line company an annual franchise tax in the case of *Ozark Pipe Line Co.* v. *Monier*, 266 U. S. 555, 69 L. Ed. 439, and the attempt of one railway company to proceed under a state eminent domain statute to acquire a connection with another railway company even when a junction at some point on its system was agreeable to the latter company in the case of *Alabama & Vicksburg R. R. Co.* v. *Jackson & E. R. Co.*, 271 U. S. 244, 70 L. Ed. 928.

Apparently appellees do not contend that the sort of regulation attempted herein would present an unsubstantial federal question if appellant's business were conceded to be in interstate commerce, but their contention is, in short, that appellant is engaged wholly in intrastate commerce.

Appellant earnestly maintains that its business activities constitute interstate commerce, and, following a decision by the Supreme Court of Illinois which appellant respectfully contends utterly failed to distinguish between the fact situation in this case and fact situations in prior decisions of this court giving rise to the application of the

principles relied upon by the state Supreme Court, appellant appealed to this court seeking a determination of the vital question whether its activities constitute interstate commerce, a mixed question of fact and law which this court will determine for itself. *Kansas City Structural Steel Co.* v. *State of Arkansas,* 269 U. S. 148, 70 L. Ed. 204.

Appellant finds no fault with the well-established principles which are relied upon by appellees, and which were relied upon by the Supreme Court of Illinois, but it does contend that those principles have no application whatsoever to the facts now before this court. From the outset of the proceedings before the Illinois Commerce Commission, appellant has relied upon other legal principles, enunciated in the very same cases, which it contends govern this case. It is evident that both the state court and appellees nourish the notion that appellant's activities are identical with those of a distributing utility selling gas under franchise at retail directly to the ultimate domestic consumer. They speak of the reduction in pressure in appellant's lines incidental to economic transportation as if it were identical to the manifold expansion of gas which takes place in the service lines of local distributing utilities in order to place the gas in readiness, at a pressure of but a few ounces, to move forward to the domestic customer's burner tip at his demand by the mere manipulation of his own service facilities, which are under his control.

As an example of the improper analogy drawn by appellees and by the state court, we refer this court to the treatment given by them to the cases of *Public Utilities Comm.* v. *Landon,* 249 U. S. 236, 63 L. Ed. 577, and *East Ohio Gas Company* v. *Tax Comm.,* 283 U. S. 465, 75 L. Ed. 1171. They quote excerpts from those cases to the effect that the delivery of gas at the burner tips, on demand, to customers of local distributing utilities constitutes intrastate commerce and that in such a case the local interest is paramount. They ignore the fact that in both of

those cases as well as in most, if not all, of the other gas cases cited by them, there also existed interstate fact situations, some closely analogous to the facts in this case, to which this court applied other principles of law producing diametrically opposite results. In the Landon case the pipe line company which delivered gas from other states to the local distributing companies was held to be engaged in interstate commerce. This court said:

> "That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted. Also it is clear that, as part of such commerce, the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state. *American Exp. Co.* v. *Iowa*, 196 U. S. 133, 143, 49 L. Ed. 417, 422, 25 Sup. Ct. Rep. 182; *West* v. *Kansas Natural Gas Co.*, 211 U. S. 229, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193, 31 Sup. Ct. Rep. 564; *Haskell* v. *Kansas Natural Gas Co.*, 224 U. S. 217, 56 L. Ed. 738, 32 Sup. Ct. Rep. 442,"

and then proceeded to differentiate between the business of the pipe line company and the local distributing companies and, in connection with the activities of the local distributing companies, enunciated the principles so inappositely quoted by appellees in their statements and by the state court in its opinion.

In the East Ohio Gas Company case the gas company, in addition to engaging in the distribution of gas at retail to ultimate domestic consumers, which situation gives rise to the quotations relied on by appellees, was also engaging in the transportation of the gas it received from other companies, at the state line, from that point to its local distribution systems. In these local distribution systems the pressure was reduced to that which was necessary, a few ounces per square inch, to carry the gas to the burner tips of the domestic consumers in usable condition, the use of each consumer being controlled by him. Before holding the distribution to domestic consumers to

be intrastate commerce, which is the part of the decision relied on by appellees and the Illinois Supreme Court, this court said:

> "The transportation of gas from wells outside Ohio by the lines of the producing companies to the state line, and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that state. The mere fact that the title or the custody of the gas passes while it is en route from state to state is not determinative of the question where interstate commerce ends. *Public Utilities Commission* v. *Landon*, 249 U. S. 239, 245, 63 L. Ed. 577, 586, P. U. R. 1919C, 834, 39 S. Ct. 268; *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 307-309, 68 L. Ed. 1027, 1029, 1030, 44 S. Ct. 544; *Peoples Natural Gas Co.* v. *Public Serv. Comm.*, 270 U. S. 550, 554, 70 L. Ed. 726, 729, 46 S. Ct. 371; *Public Utilities Comm.* v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 89, 71 L. Ed. 549, 553, 47 S. Ct. 294."

It will be noted that in the East Ohio Gas Company case the transportation from the state line to the distribution systems, with unimportant exceptions, is closely akin to the activities of appellant. It also will be noted that this court, in further distinguishing the interstate and intrastate activities, alluded to the fact that the furnishing of gas to consumers in Ohio municipalities by means of distribution plants to supply the gas suitably for the service for which it was intended was to be distinguished from the situation first above noted.

Appellees place some reliance upon the case of *Southern Natural Gas Co.* v. *Alabama*, 301 U. S. 148, 81 L. Ed. 970. However, the facts in that case which lead this court to consider part of the activities of the gas company to be intrastate in character certainly are not present in this case. In that case the gas company not only installed the usual meter stations, but established the requisite serv-

ice lines running to the various industrial plants and furnished gas in the manner suited to the consumers' needs. It appears that in effect the gas company had constructed a small distribution system and was serving gas on demand and in such a manner as to serve the needs of the consumers. "The sales to the Tennessee company, and its affiliates, were made from time to time upon orders given by the Birmingham office as the needs of the purchasers required."

But appellees say that all appellant's property is located within the State of Illinois. So were all of the high pressure gas transmission pipe lines of East Ohio Gas Company located in the State of Ohio.

Appellees say that appellant purchases its gas and there is a change in title en route. Such was the fact in the East Ohio Gas Company case and in the case of *Public Utilities Company of Rhode Island* v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 71 L. Ed. 549. In the latter case this court held that a state cannot regulate the rates charged by a local electrical corporation for current sold to a foreign corporation for use in another state and delivered at the state boundary. The following is an excerpt from the opinion of this court:

> "It is conceded rightly that the sale of electric current by the Narragansett Company to the Attleboro Company is a transaction in interstate commerce notwithstanding the fact that the current is delivered at the state line. The transmission of electric current from one state to another, like that of gas, is interstate commerce * * * and its essential character is not affected by a passing of custody and title at the state boundary not arresting the continuous transmission to the intended destination."

Appellees stressed the fact that appellant reduced the pressure of the gas upon receiving it from Panhandle Eastern Pipe Line Company. It is difficult to understand what possible effect that could have in principle unless coupled with facts such as exist in connection with the

distribution of gas at retail as in the cases cited by appellees. Obviously, a pipe line company must carry pressures consistent with economic exigencies and appellant would have no reason to carry a pressure in a line supplying Peoria, Illinois, equal to that carried by Panhandle Eastern Pipe Line Company in a line supplying the distributing company in Detroit, Michigan, as well as many other utilities in several states. Surely appellees would not contend that a shipment of goods from Texas to a predetermined customer in Illinois would lose its interstate character merely because it was carried by fast main line rail part of the way and thence by slower branch line to the point of destination.

The record shows that appellant carries pressures in its several lateral lines varying from a low of thirty-eight pounds per sqaure inch in one line to a high of one hundred seventy-three pounds per sqaure inch in another line. The difference in pressures depends upon the size of the load, the distance the gas has to be carried and other operating conditions which affect economical transportation. Deliveries are then made from these several lines to the various distributing companies, at pressures ranging from fifteen pounds per square inch to ninety-one pounds per square inch. The distributing companies must again reduce pressure in order that gas may be distributed "at about six inch pressure or 3.47 ounces."

In *State Tax Comm.* v. *Interstate Natural Gas Co.*, 284 U. S. 41, 76 L. Ed. 156, the gas company which transported gas from sources out of the State of Mississippi and sold gas to distributing companies within that state reduced pressure at the points of delivery within said State of Mississippi. This court, commenting on this circumstance, said:

> "The pressure of the gas is reduced by the plaintiff before it passes into the purchaser's hands. The work done by the plaintiff is done upon the flowing gas to help the delivery and seems to us plainly to be incident to the interstate commerce between

> Louisiana and Mississippi. The plaintiff simply transports the gas and delivers at wholesale, not otherwise worked over than to make it ready for delivery to the independent parties that dispose of it by retail."

The claimed analogy between reduction in pressure and breaking bulk can have no general application. The breaking of bulk has often been alluded to as symbolic of the completion of interstate commerce because ordinarily that marks the reception of the bulk package by the predetermined recipient to whom it has in effect been appropriated from the outset of the interstate journey and the subsequent offering of the contents of the bulk package to undetermined customers at retail in quantities and at times requested.

No such analogy properly can be drawn here. The record discloses the undisputed facts to be that prior to appellant's connecting its lateral lines with the facilities of any of its wholesale customers, Panhandle Eastern Pipe Line Company is advised of the proposed delivery and sale, the date upon which service will be required, the estimated daily demand of the customer involved, and of the various circumstances with respect to the peak demands of such customer; that Panhandle Eastern Pipe Line Company, in packing its transmission line from day to day with natural gas from its sources of supply, estimates the quantities of natural gas which will be required by all of its customers, including appellant, in the various states in which it sells natural gas and, pursuant to such estimates and line-packing activities, it continuously transports the required quantities of gas to fulfill the requirements of all of its wholesale customers; that the quantities of gas necessary to fulfill appellant's requirements are transported continuously by Panhandle Eastern Pipe Line Company from its sources of supply to the various points of delivery where it is delivered to appellant, such deliveries being made without reduction in pressure, and appellant, without breaking the continuity of transportation, carries said gas continuously

through its lateral lines with only such reduction in pressure as is calculated to effectuate the most economical transportation to its wholesale customers; that from day to day the requirements of all of appellant's wholesale customers are estimated in advance to enable Panhandle Eastern Pipe Line Company to deliver to appellant each day the necessary quantities of gas to fulfill the requirements of the distributing companies being supplied by appellant, and that in this manner natural gas which is contracted for by appellant, before the gas leaves the ground at the sources of supply of Panhandle Eastern Pipe Line Company, is appropriated in a practical sense to appellant's various wholesale customers and is carried continuously and at high pressures through the facilities of Panhandle Eastern Pipe Line Company and appellant to its various destinations without unnecessary treatment, without break in transportation, and without storage, intermediate or otherwise. The record shows that this is the daily, normal, contemplated and followed course of effecting transportation and delivery of gas to the wholesale customers of appellant.

Applying long-established principles to these undisputed facts, it seems that appellees' contentions that appellant is engaged in intrastate commerce and that there is presented, therefore, no substantial federal question, are wholly untenable.

Applicable principles are forcibly stated in *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105, 62 L. Ed. 1006, wherein a state commission sought to regulate interstate telegraphic quotations of the New York Stock Exchange. This court said:

> "* * * It is enough that, in our opinion, the transmission of the quotations did not lose its character of interstate commerce until it was completed in the brokers' offices, and that the interference with it was of a kind not permitted to the states. The supposed analogy that has prevailed is that of a receiver of a package breaking bulk and selling at will in retail trade. But it appears to us misleading.

We also think it unimportant that the contracts between the Exchange and the telegraph companies emphasize the element of *quasi* sale for a lump sum and leave it to the interest of the telegraph companies to find subscribers. Neither that nor the intervention of an operator, or of another company, are in the least degree conclusive. Unlike the case of breaking bulk for subsequently determined retail sales, in these the ultimate recipients are determined before the message starts, and have been accepted as the contemplated recipients by the Exchange. It does not matter if they have no contract with the Exchange, directly. It does not matter that if the telegraph companies did not deliver to any given one the Exchange could not complain. If the normal, contemplated and followed course is a transmission as continuous and rapid as science can make it from Exchange to broker's office, it does not matter what are the stages or how little they are secured by covenant or bond."

* * * * * * *

"It is admitted that the transmission from New York to Massachusetts by the telegraph company was interstate commerce. If so, it continued such until it reached 'the point where the parties originally intended that the movement should finally end' (citing cases)."

A case bearing a close analogy on the facts is that of *Peoples Natural Gas Co.* v. *Public Service Comm.*, 270 U. S. 550, 70 L. Ed. 726. The Peoples Natural Gas Company was incorporated under the laws of Pennsylvania and was engaged in producing, purchasing, transporting by pipe line, and selling natural gas wholly within the State of Pennsylvania. About two-thirds of its gas supply was purchased from a producing company in West Virginia, whose lines connected with those of Peoples Natural Gas Company at the Pennsylvania-West Virginia state line. The gas coming from West Virginia was transported in a continuous stream from the places of production to those of consumption. Speaking of the essential

character of the transportation of the West Virginia gas, the court said:

> "As respects the West Virginia gas, we are of the opinion, in view of its continuous transportation from the places of production in one state to those of consumption in the other and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that the passing of custody or title at the state boundary without arresting its movement to the destinations intended are minor details which do not affect the essential nature of the business" (citing *Western Union Tel. Co.* v. *Foster; Public Utilities Comm.* v. *Landon,* and other cases).

Moreover, it is important to note in passing that while this court held that the Public Service Commission of Pennsylvania had the authority to compel the gas company to continue selling natural gas to the distributing company at Johnstown, Pennsylvania, for resale to domestic consumers in Johnstown, it clearly implied that it would not have done so if it had not been for the circumstance that the local production of gas by the gas company from wells within the State of Pennsylvania appeared to be more than sufficient to meet the requirements of the Johnstown company.

The principle that transportation of natural gas or, for that matter, any other commodity to predetermined recipients thereof, once begun in interstate movement, continues as an interstate transaction until the commodity reaches the destination intended by the parties appears to be so well established, therefore, as to justify appellant in refraining from burdening this court with an exhaustive treatment of numerous other cases enunciating that principle and, accordingly, only the following few of those cases are here cited:

United States v. *Erie R. R. Co.*, 280 U. S. 98, 74 L. Ed. 187;

Carson Pet. Co. v. *Vial*, 279 U. S. 95, 73 L. Ed. 626;

Champlain Realty Co. v. *Brattleboro*, 260 U. S. 366, 67 L. Ed. 309;

Western Oil Refining Co. v. *Lipscomb*, 244 U. S. 346, 61 L. Ed. 1181;

Texas & N. O. R. Co. v. *Sabine Tram Co.*, 227 U. S. 111, 57 L. Ed. 442; and

Coe v. *Errol*, 116 U. S. 517, 29 L. Ed. 715.

It is noteworthy that while in some of the cases above cited, the transportation was not continuous and the exact recipients of the commodities were not determined, this court nevertheless was of the opinion that there was no break, within the meaning of the commerce clause of the Federal Constitution, in the continuity of transportation so long as the normal, repeated and contemplated course of the transportation was such as to mark the commodities as practically appropriated to recipients in a foreign state or country.

It will be of interest here to direct the court's attention to the fact that the record shows that in the State of Missouri Panhandle Eastern Pipe Line Company owns not only the main transmission line but also the various lateral or branch lines which are used to convey gas to the several utility distributing companies to which it transports and sells natural gas in that state, and that the manner of procuring, transporting and delivering natural gas to the Missouri utilities, including reductions in pressure, and all other matters of operation, is identical with that employed by both Panhandle Eastern Pipe Line Company and appellant, its subsidiary, in the State of Illinois. We assume that appellees would not contend that Panhandle Eastern Pipe Line Company's activities in the State of Missouri were intrastate in character and if this assumption is correct, it is clear that appellees must place their sole reliance upon the remaining circumstances of separate ownership of appellant's property

in Illinois, the passing of title of the gas en route and the acquiescence of appellant in the claimed authority of Illinois Commerce Commission, none of which appears to be of the slightest importance if the rule is to be followed that what is interstate commerce is to be determined by practical considerations based upon actual facts and the normal course of business rather than upon technical legal concepts, title and niceties of form.

From reading the statements of appellees, it would seem that the necessary result of applying well-established principles to the facts in this case is sought to be avoided by some covert and undisclosed principle—perhaps of estoppel—predicated upon appellant's actions before the Illinois Commerce Commission. Appellees stressed the fact that appellant has filed rate schedules with Illinois Commerce Commission and has submitted to the claimed and asserted jurisdiction of that body in various instances. This, appellant cannot deny. When the transmission system of Panhandle Eastern Pipe Line Company was constructed, it formed a subsidiary, Panhandle Illinois Pipe Line Company, an Illinois corporation, which took title to the main and lateral lines, compressor stations and other facilities in the State of Illinois, which formed a part of the integrated system of Panhandle Eastern Pipe Line Company. Later, Panhandle Illinois Pipe Line Company transferred the main line and compressor stations to its parent company and the lateral or branch lines to appellant and was then dissolved. Permission of Illinois Commerce Commission to carry out this transaction was requested and given. The record does not disclose the reasons for appellant's submission to the claimed authority of Illinois Commerce Commission. Let it be assumed for the sake of argument that Panhandle Eastern Pipe Line Company believed the law required an Illinois corporation to own the pipe line property in that state or that it was advised, or erroneously believed, that its business in Illinois was

intrastate commerce, or that by submission to the purported authority of Illinois Commerce Commission it might thereby avoid federal regulation. Under any assumption that may be indulged, both Panhandle Eastern Pipe Line Company and appellant would be powerless to alter legal principles or statutes. The record shows that the essentials of interstate commerce were not eliminated and that the character of the transportation and the detailed course of operations were not changed in the least from that existing in other states where Panhandle Eastern Pipe Line Company owned both the main line and the laterals.

At no stage of the proceedings in this case have appellees raised the question of estoppel or any similar question by challenging the right of appellant to deny the asserted jurisdiction of Illinois Commerce Commission or to attack the validity of that commission's order, as applied to appellant, or of the statute, under the supposed authority of which the order was made, when construed to authorize such order. Appellees have not shown that the State of Illinois or the Illinois Commerce Commission has suffered any detriment or change of position or has been prejudiced in any manner whatsoever by reason of appellant's acquiescence in the asserted jurisdiction of Illinois Commerce Commission; nor have they shown, or offered to show, that appellant has secured any benefit or advantage or exercised any right by reason of such acquiescence which it could not otherwise have secured or exercised. As this court said in the case of *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 80 L. Ed. 688, "Estoppel in equity must rest on substantial grounds of prejudice or change of position, not on technicalities."

Had it not been for the enactment of the Natural Gas Act, it may be that appellant would have been willing to submit indefinitely to the rules, regulations and orders of Illinois Commerce Commission even though

that body had not the slightest jurisdiction as a duly constituted authority, but when Congress enacted the Natural Gas Act, and, by so doing, manifested its intention of occupying the field of interstate transportation or sale for resale of natural gas, appellant had no alternative but to resist the asserted authority of Illinois Commerce Commission to which it formerly had submitted. Appellant is unaware of any rule of law under which it could confer the authority, vested in Congress, upon Illinois Commerce Commission or avoid or frustrate the Congressional delegation of authority to Federal Power Commission by acquiescence in an illegal assumption of jurisdiction by the Illinois Commerce Commission. The law of estoppel is not so potent. If it were, it would be a simple matter for any interstate natural gas company to strip the Federal Power Commission of any authority with respect to the powers delegated to it.

In this connection it is pertinent to repeat here that, although the question of the conflict between the order of the Illinois Commerce Commission and the Natural Gas Act necessarily is secondary, the enactment of that law and the virtually complete occupation of the field of regulation claimed by Illinois Commerce Commission over appellant adds greatly to the substantiality of the federal question upon the point that the order of the Illinois Commerce Commission was unconstitutional and void, as applied to appellant, because of its repugnancy to the commerce clause of the Federal Constitution although that question required no such support, the principal effect being, rather, to inject into the case another federal question of far-reaching importance. Further, if prior to the enactment of the Natural Gas Act it could have been claimed successfully, which appellant denies, that appellant was estopped from denying the jurisdiction of Illinois Commerce Commission, certainly since the enactment of the Natural Gas Act any claim of estoppel, even if properly raised, cannot have any persuasive force.

Appellees indicate that Panhandle Eastern Pipe Line Company has contracted to furnish the requirements of appellant and that appellant has filed rate schedules governing the sale of gas to qualified utilities within certain territories in the State of Illinois. They say that compliance with the order of Illinois Commerce Commission will not visit any harmful effect upon either company. Appellant and Panhandle Eastern Pipe Line Company might conceivably add that they desire to sell all the gas possible in the State of Illinois and that it makes little difference to them whether appellant is regulated by Illinois Commerce Commission or Federal Power Commission, but Federal Power Commission, to which has been delegated the power of regulation with respect to interstate transportation or sale for resale of natural gas, may have considerably different notions with respect to the contracts and dealings between Panhandle Eastern Pipe Line Company and appellant, to the invasion of markets of other natural gas companies by appellant and to the effect of compulsory sales in Illinois upon Panhandle Eastern Pipe Line Company's ability or capacity to meet the requirements of other of its customers in other states under existing contracts.

In *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. Ed. 1117, there was involved the attempt by the State of West Virginia to give to her citizens a preferred right of purchase of natural gas over consumers in other states. In dealing with the question of interference with interstate commerce, this court said:

> "Of course, in the last analysis, the question is whether the enforced withdrawal for the benefit of local consumers is such an interference with interstate commerce as is forbidden to a state by the Constitution. The question is an important one; for what one state may do others may, and there are ten states from which natural gas is exported for consumption in other states. Besides, what may be done with one natural product may be done with others,

and there are several states in which the earth yields products of great value which are carried into other states and there used. But, notwithstanding the importance of the question, its solution is not difficult. The controlling principles have been settled by many adjudications, some so closely in point that the discussion here may be relatively brief.

"By the Constitution, Article I, Section 8, Clause 3, the power to regulate interstate commerce is expressly committed to Congress and therefore impliedly forbidden to the states. The purpose in this is to protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile state laws, and to insure uniformity in regulation. It means that in the matter of interstate commerce we are a single nation—one and the same people. All the states have assented to it, all are alike bound by it, and all are equally protected by it."

* * * * * * *

"Natural gas is a lawful article of commerce and its transmission from one state to another for sale and consumption in the latter is interstate commerce. A state law, whether of the state where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs, or burdens such transmission, is a regulation of interstate commerce—a prohibited interference."

In *Alabama & Vicksburg R. R. Co.* v. *Jackson & E. R. Co.*, 271 U. S. 244, 70 L. Ed. 928, a railroad corporation organized under the laws of the State of Mississippi instituted a proceeding under the state law to secure by eminent domain a connection with the interstate railroad of the Alabama & Vicksburg Railway Company. In holding that the Interstate Commerce Commission had exclusive jurisdiction in the matter, this court said:

"It is true that in this case the state court found that the place selected for the junction was a proper one. But the power to make the determination whether state action will obstruct interstate commerce inheres in the United States as an incident of

its power to regulate such commerce. * * * Congress has vested in the commission the authority to find the facts and thereon to exercise the necessary judgment."

So here, it would seem evident that the determination of the propriety of the extension of facilities and service by appellant into a market area already being served by another natural gas company is for Federal Power Commission, and in this connection it is interesting to note that that commission, in the course of its administrations of the Natural Gas Act, has already construed that act as being applicable to a situation precisely like that in this case, conformably, we believe, with long and well-established principles laid down by this court. In *In re Billings Gas Company*, Docket G-152, 35 (N.S.) P. U. R. 321, the Federal Power Commission holding, and the pertinent facts upon upon which the holding rests, are stated in the following language:

"The Ohio Oil Company produces and gathers natural gas in the State of Wyoming, transports the same from the termini of the gathering lines to the Wyoming-Montana state line and thence sells and delivers gas to Billings Gas Company, which in turn transports the same through a transportation pipe line to Billings, Montana, and to other cities and towns in the state, where it is resold for ultimate public consumption. The flow of natural gas through the interconnected facilities of the Ohio Oil Company and the Billings Gas Company to points of local distribution in Montana is a continuous transportation of natural gas in interstate commerce. Both the Ohio Oil Company and the Billings Gas Company are engaged in such transportation, and therefore come within the definition of natural gas companies in the

Natural Gas Act and are not within the exemption of Section 1 B, *supra.*"

Substitute Panhandle Eastern Pipe Line Company for Ohio Oil Company and appellant for Billings Gas Company, and the analogy is well nigh perfect.

In *Hanley* v. *Kansas City S. R. Co.*, 187 U. S. 617, 47 L. Ed. 333, this court said:

> "No one contends that the regulation could be split up according to the jurisdiction of state or territory over the track, or that both state and territory may regulate the whole rate. There can be but one rate, fixed by one authority, whether that authority be Arkansas or Congress."

So, in the present instance, if it be conceded that appellant is engaged in interstate commerce within the sense of the Natural Gas Act, the order of the Illinois Commerce Commission directing appellant to extend its facilities and service in the manner and to the market covered in the order, if allowed to stand unchallenged, would effecutally emasculate the Natural Gas Act. It often has been stated in decisions of this court that the acts of Congress on the subject of interstate commerce are supreme and exclusive, and that there cannot be any divided authority over such commerce. There does not appear to be any valid reason for a contention that there should be any divided authority in this instance.

Conclusion.

Appellant respectfully submits, therefore, that appellees' statements against jurisdiction of this court and their twin motions to dismiss or affirm are without substantial merit and ought to be denied, and that appellant's appeal, presenting, as it does, questions urgently requiring a decision important, among other things, to the administra-

tion of the Natural Gas Act in connection with which this is believed to be the first case presented to this court, ought to be granted.

Respectfully submitted,

GLENN W. CLARK,
RUSSELL VOERTMAN,
Kansas City, Missouri,
ALBERT C. SCHLIPF,
Springfield, Illinois,
Counsel for Appellant.